

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Lan Lewis
1015 E. Griffith Way
Fresno, CA 93704

Case No. 2007-206

OAH No. N2007030131

Registered Nurse License No. 612576

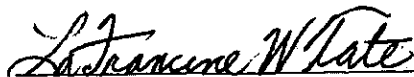
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on October 29, 2007.

IT IS SO ORDERED September 28, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LAN THI LEWIS, a.k.a.
LAN T. LEWIS,
Fresno, California 93704

Registered Nurse License No. RN 612576

Respondent.

Case No. 2007-206

OAH No. N2007030131

PROPOSED DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on July 10, 2007.

Arthur D. Taggart, Lead Supervising Deputy Attorney General, represented the complainant.

Respondent was present and was represented by Suzanne Kedhe, Attorney at Law.¹

Evidence was received, and the matter was submitted for decision on July 10, 2007.

FACTUAL FINDINGS

1. Complainant Ruth Ann Terry, M.P.H., R.N., filed the Accusation, dated February 1, 2007, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California.

2. On January 30, 2003, the California Board of Registered Nursing (California Board) issued Registered Nurse License Number RN 612576 to Lan Thi Lewis, also known as Lan T. Lewis (respondent). Respondent's registered nurse license was in full force and effect at all times pertinent herein, and will expire on March 31, 2008, unless renewed.

¹ 433 East Keats, Suite 8, Fresno, California 93710.

3. On September 20, 2001, the Board of Registration in Nursing for the Commonwealth of Massachusetts (Massachusetts Board) issued respondent a license to engage in the practice of nursing as a registered nurse, License Number 244209. Respondent's license expired February 13, 2004, and has not been renewed.

4. On August 21, 2005, pursuant to the Final Decision and Order by Default (Default Decision) issued by the Massachusetts Board, in the disciplinary proceeding entitled, *In the Matter of Lan T. Lewis, RN License No. 244209, License Expired 2/13/04*, Docket No. RN 02-366, the Massachusetts Board revoked respondent's right to renew her license to practice as a registered nurse in Massachusetts. The Massachusetts Board also ordered that if respondent renewed her registered nurse license before the effective date of the Default Decision, respondent's license to practice as a registered nurse in Massachusetts would be revoked.

5. The Massachusetts Board found that the allegations in its April 5, 2005 Order to Show Cause against respondent in Docket No. RN 02-366 (OTSC), and the violations of statutes and regulations stated therein, were deemed admitted and established, including the following:

A. Respondent was employed by Falstaff Travel Nursing Agency at Mercy Medical Center in Springfield, Massachusetts between October 2001 and February 2002. A review of the medical records of three patients assigned to respondent's care revealed that she repeatedly failed to properly document the handling, administration, and destruction of controlled substances. Respondent's conduct was deemed "consistent with the diversion of controlled substances."

B. On numerous occasions during her employment at Mercy Medical Center, respondent submitted overtime slips for payment for time she was not scheduled to work, and did not work. On many of these time slips, respondent forged the signature of the Nurse Manager of the Intensive Care Unit to falsely indicate the overtime was authorized.

C. Respondent's conduct warranted disciplinary action against her license to practice as a registered nurse in Massachusetts pursuant to Massachusetts General Laws (G.L.) Chapter 112, section 61, for "deceit, malpractice, or gross misconduct in the practice of the profession, or for any offense against the laws of the Commonwealth related thereto."

D. Respondent's conduct warranted disciplinary action against her license to practice as a registered nurse in Massachusetts pursuant to Massachusetts Board regulation 244 CMR 9.03, for violation of the Massachusetts Standards of Conduct for Nurses.

E. Respondent's conduct constituted unprofessional conduct and conduct which undermines public confidence in the integrity of the profession.

6. Respondent was born in Viet Nam in 1955, and came to the United States in 1975. She attended college and nursing school in Tennessee and became licensed as a registered nurse in Tennessee in 1983. Respondent worked at Nashville General Hospital for five years, then worked at Vanderbilt University Hospital. Respondent also worked as a hospice nurse and a home health nurse in Tennessee.

7. In 2001, respondent became a traveling nurse, working at various locations throughout the United States through nurse registries. She worked in Rhode Island and in Connecticut before coming to Mercy Hospital in Springfield, Massachusetts in November 2001. Respondent left Mercy Hospital in February 2002 to work in California. Respondent worked from February to March, 2002, at Warwick Hospital in Santa Rosa. Thereafter, she was employed at Summit Hospital in Oakland, California from June 2002 to January or February 2003. She worked at Antelope Valley Hospital in Lancaster, California, for about three months. She then worked for Kaiser Hospital in Fresno from September 2003 to March 2004. She worked at the Naval Hospital in Lemoor, California for three months in the fall of 2004. She worked in Santa Marie for three months, then returned to Fresno and worked at Centennial Medical Center until November 2005, when her contract ended. Respondent left California in November 2005 to care for her sick mother in Tennessee. She returned to California in January 2006, and has not worked as a registered nurse since that time.

8. In June of 2002, respondent received a letter, dated June 27, 2002, from the Massachusetts Board's Division of Professional Licensure, Office of Investigations, informing her that a complaint had been filed against her license based on an investigation by the Massachusetts Department of Public Health-Drug Control Program (DPH-DCP). The letter states, in pertinent part:

...The complaint alleges that while you were employed as an agency nurse assigned to Mercy Medical Center, failed [sic] to adhere to the standards of practice regarding the administration and documentation of controlled substances. A copy of the complaint is enclosed for your review.

The nature of this complaint indicates that you *may* have a substance abuse problem. If this is the case, the Board of Registration in Nursing would like you to know about its Substance Abuse Rehabilitation Program (SARP)....

Whether or not you are interested in SARP, your written response to this complaint must be sent to me within thirty (30) days of your receipt of this letter. Your response must include your explanation regarding the allegations against you as well as the additional documentation as indicated on the enclosed form.

Should you contact the Board's Substance Abuse Program Coordinator, it is still necessary that you respond to me in writing regarding this complaint.

[REDACTED]...[REDACTED]

9. Respondent did not submit any information to the Massachusetts Board, nor did she otherwise respond to the letter of June 27, 2002.

10. In August of 2002, respondent received a letter, dated August 13, 2002, from the Tennessee Department of Health, Bureau of Health Licensure and Regulation, Division of Health Related Boards (Tennessee Board), which stated, in pertinent part:

A complaint, which was filed against you, was forwarded to the Board Consultant for disposition after investigation. After a review by the Consultant, a decision was made that this matter did not merit further action.

This is not a disciplinary action and no record of it will appear in your licensure file.

[REDACTED]...[REDACTED]

11. Respondent presumed that the August 13, 2002 letter referred to the complaint filed against her with the Massachusetts Board (referenced in the June 27, 2002 letter). After receiving the August 13, 2002 letter from the Tennessee Board, respondent believed that the complaint against her had been determined to be without merit, and she took no further action with either the Tennessee Board or the Massachusetts Board.

12. Respondent received the Massachusetts Board's OTSC in April 2005. The OTSC stated, in part, that respondent was "hereby ordered to appear and show cause why the [Massachusetts Board] should not suspend, revoke or otherwise take action against your license to practice nursing as a Registered Nurse ('RN') in the Commonwealth of Massachusetts..." The OTSC stated that respondent had the right to an adjudicatory hearing on the allegations contained in the OTSC before the Massachusetts Board acted to suspend, revoke, or impose other discipline against her license. The OTSC notified respondent that her right to a hearing "may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6) (d) *within twenty-one (21) days of receipt of this Order to Show Cause*." The OTSC further stated, in part:

[REDACTED]...[REDACTED]

Your failure to submit a written request for a hearing within 21 days of receipt of this Order to Show Cause *shall*

constitute a waiver of the right to a hearing on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause within 21 days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. **Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default.**

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice as a Registered Nurse in the Commonwealth of Massachusetts, including any right to renew your license.

[¶]...[¶]

13. Respondent did not respond to the OTSC, because her Massachusetts license had expired in 2004, and she had no desire to renew it. She “did not know it would be this bad,” or that the Massachusetts Board would contact the California Board after taking disciplinary action. Respondent testified at hearing that it was “her mistake” to not consult a lawyer when she received the OTSC.

14. In August 2005, respondent received the Massachusetts Board’s Default Decision, dated August 11, 2005. In a portion of the Default Decision entitled, “Procedural Background,” it states that, after respondent failed to file an answer to the OTSC:

On July 18, 2005, Prosecuting Counsel filed the above-referenced Default Motion,² with supporting Memorandum of Law, Affidavit and Exhibits 1-5. In that Default Motion, Respondent was notified of her right to a hearing and waiver of this right if she did not submit a written response to the Default Motion and a written request for a hearing within seven (7) days of the date of the Default Motion. Respondent was further notified that failure to respond in a timely manner would cause the [Massachusetts] Board to: (a) enter a Final Decision and Order which assumes the truth of the allegations in the Order to Show Cause; and (b) revoke, suspend, or take other disciplinary action against her license to practice as an MR in the Commonwealth. At no time has Respondent appeared, responded, or defended.

² Prosecuting Counsel’s Motion for Entry of Final Default Judgment and for Final Decision and Order by Default.

15. In the "Exhibits" portion of the Default Decision, it indicated that documents were served on respondent by first class and certified mail at 1015 East Griffith Way, Fresno California, in addition to an address in Tennessee, which was her address of record with the Massachusetts Board.

16. In the portion of the Default Decision entitled "Right to Appeal," it states: "Respondent is hereby notified of her right to appeal this Final Decision and Order by Default within thirty (30) days of receipt of notice of this Final Decision pursuant to G.L. c. 112, § 64 and G.L. c. 30A, §§ 14 and 15." The Default Decision was served on respondent at her addresses in Tennessee and Fresno.

17. Respondent did not appeal the Default Decision or otherwise contact the Massachusetts Board. As of the date of hearing, she has not taken any action to obtain reinstatement of her Massachusetts registered nurse license, or to otherwise resolve this matter with the Massachusetts Board. Respondent testified that, after she received notification of the complaints against her in Massachusetts, she "was afraid to go back" because she was "afraid of being arrested." Respondent denies engaging in any misconduct while employed at Mercy Medical Center.

18. In January 2006, respondent received a letter from the California Board, dated January 18, 2006, which stated in part:

The Board of Registered Nursing has received a report alleging that you may have misused drugs or alcohol in violation of one or more parts of Section 2762 of the Nursing Practice Act. In lieu of the Board proceeding with an investigation, we would like to offer you an opportunity to participate in the Board's Diversion Program.

[¶]...[¶]

If you choose not to participate or are unsuccessful in completing the Diversion Program, the report we have received will be investigated, which may result in disciplinary action against your license. If no evidence of a violation of the Nursing Practice Act is found after the investigation, the case would be closed.

[¶]...[¶]

19. Respondent contacted the California Board several times after receiving the January 18, 2006 letter. Respondent testified that she declined to enter the California Board's Diversion Program because she was not misusing drugs or alcohol, and she felt that entering such a program would be an admission that she had a substance abuse problem.

20. After respondent received the California Board's January 18, 2006 letter, she ceased practicing as a registered nurse in California. She felt that, while there was an investigation pending, she might be blamed if a problem arose in a hospital where she might be working. She has not engaged in any continuing education or other activities to maintain her skills and proficiency as a registered nurse since January 2006.

21. Respondent submitted four reference forms prepared by former employers, which were received in evidence and considered to the extent permitted under Government Code section 11513, subdivision (d).³ The first two were written by employees of Summit Medical Center in Oakland. Respondent was rated as "excellent" or "above average" in all categories, and was deemed eligible for rehire. She was commended for her "good patient care" and "delightful attitude." The second two reference forms were written by employees of Kaiser Permanente Medical Center in Fresno. Respondent was rated "Superior" in all categories, and was again deemed eligible for rehire.

22. Respondent is currently unemployed. She lives with her fiancée, who provides her with financial support. She would like to continue working as a registered nurse, preferably through a nurse registry.

23. Complainant has requested reimbursement for costs incurred by the California Board in connection with the investigation and prosecution of this matter, in the total amount of \$1,007.25. The costs were certified in the manner provided by Business and Professions Code section 125.3, subdivision (c). The requested costs include one hour of paralegal time, in the amount of \$98.75, and 5.75 hours of attorney time, in the amount of \$908.50. Respondent did not object to these costs. These costs are reasonable.

LEGAL CONCLUSIONS

Cause for Disciplinary Action

1. Business and Professions Code section 2761, subdivision (a)(4), provides that the California Board may take disciplinary action against a certified or licensed nurse for unprofessional conduct, which includes, but is not limited to, "[d]enial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board." A certified copy of the decision or judgment shall be conclusive evidence of that action.

³ Government Code section 11513, subdivision (d), states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

2. Clear and convincing evidence established cause for discipline of respondent's California license based upon unprofessional conduct, pursuant to Business and Professions Code section 2761, subdivision (a)(4), in that she has had disciplinary action taken against a health care professional license by another state licensing agency, by reason of Findings 4 and 5.

Penalty

3. Pursuant to California Code of Regulations, title 16, section 1444.5,⁴ the California Board has adopted Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines). The Guidelines specify that the following factors are to be considered in determining whether revocation, suspension or probation is to be imposed in a given case:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

4. Under "Other Situations in which Revocation is the Recommended Penalty," the Guidelines include: "1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation."

5. In this case, respondent's Massachusetts nursing license was revoked for misconduct which included (a) failure to properly document the handling, administration, and destruction of controlled substances involving three patients, over a three month period,

⁴ California Code of Regulations, title 16, section 1444.5, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation--for example: the presence of mitigating factors; the age of the case; evidentiary problems.

in a manner that the Massachusetts Board deemed consistent with diversion of controlled substances; and (b) falsification of time records for work not performed, and forgery of the signature of the Nurse Manager to falsely indicate that overtime work was authorized. This conduct is serious, and goes to the heart of nursing care, namely, honesty, integrity, and patient safety. There was potential harm to patients, and actual harm to the public, in that respondent was paid for work she did not perform.

Respondent has no other history of disciplinary action, and hearsay evidence suggests that she was well-regarded by her supervisors at two hospitals in California where she was previously employed (Finding 21). However, the individuals preparing the reference forms were not aware of the Massachusetts Board's investigation or disciplinary action, and respondent produced no other evidence of mitigation or rehabilitation.

Respondent's failure to respond to or in any way defend against the Massachusetts Board's disciplinary action is a matter of particular concern. Although respondent testified that she did not intend to renew her Massachusetts license, her contention that she did not realize the ramifications of her failure to take action is neither credible nor reasonable. Respondent was advised in both the OTSC and the Default Motion that her failure to request a hearing or respond to the charges would result in a finding that the charges against her would be deemed true (Findings 12 through 15). Even after receiving the Default Decision, she was advised of her right to appeal the decision (Finding 16). At hearing, respondent professed her "innocence" of the charges in the Massachusetts licensing action. However, the current hearing is not the proper forum to dispute the findings in the Default Decision. Moreover, by analogy to cases involving criminal convictions, respondent has taken no steps to have her Massachusetts disciplinary action "expunged," by seeking reinstatement of said license.

6. Respondent's nursing license was revoked by the Massachusetts Board for conduct that would have violated the California Nursing Practice Act. Just as respondent's failure to appear before the Massachusetts Board to respond to the charges against her resulted in the outright revocation of her Massachusetts nursing license, revocation of her California registered nurse license is the appropriate remedy.

Costs

7. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."⁵ *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the

⁵ California Code of Regulations, title 1, section 1042, implementing Business and Professions Code section 125.3, states:

(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.

Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent was unsuccessful in getting any allegations dismissed. Respondent's subjective belief in the merits of her position were unreasonable, and thus not in "good faith." Respondent did not raise a colorable challenge to the proposed discipline (revocation of her license). Although respondent testified that she was not currently employed (Finding 22), there was no other evidence presented relating to respondent's financial ability to pay costs. As set forth in Finding 23, the amount sought appears to reflect that the scope of investigation was appropriate to the misconduct. In summary, \$1,007.25 is a reasonable amount for investigative and prosecution costs in this matter.

ORDER

1. Registered Nurse License Number RN 612576, issued to respondent Lan Thi Lewis, also known as Lan T. Lewis, is revoked pursuant to Legal Conclusions 1 through 6.

2. Pursuant to Legal Conclusion 7, if and when respondent's license is reinstated, she shall pay to the California Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3, in the amount of \$1,007.25.

Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

(3) When the agency presents an estimate of actual costs incurred, its Declaration shall explain the reason actual cost information is not available.

(4) The ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs.

(c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

Dated: 8-3-07

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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Facsimile: (916) 327-8643

7 Attorneys for Complainant
8

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 LAN THI LEWIS,
a.k.a. LAN T. LEWIS
14 1015 East Griffith Way
Fresno, CA 93704

15 Registered Nurse License No. RN 612576

16 Respondent.
17

Case No. 2007-206

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about January 30, 2003, the Board issued Registered Nurse License
24 Number RN 612576 to Lan Thi Lewis, also known as Lan T. Lewis ("Respondent").
25 Respondent's registered nurse license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on March 31, 2008, unless renewed.

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1 disciplinary proceeding titled *In the Matter of Lan T. Lewis RN License No. 244209, License*
2 *Expired 2/13/04*, Docket No. RN 02-366, the Massachusetts Board revoked Respondent's right
3 to renew her license to practice as a registered nurse in Massachusetts. The Massachusetts Board
4 also ordered that if Respondent renewed her registered nurse license before the effective date of
5 the Final Decision and Order by Default, Respondent's license to practice as a registered nurse in
6 Massachusetts would be revoked. A true and correct copy of the Final Decision and Order by
7 Default is attached as exhibit "A" and incorporated herein by reference.

8 **PRAYER**


9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number RN 612576,
12 issued to Lan Thi Lewis, also known as Lan T. Lewis;

13 2. Ordering Lan Thi Lewis, also known as Lan T. Lewis, to pay the Board of
14 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 2/1/06.

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19 
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

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22 Complainant
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EXHIBIT A

Final Decision and Order by Default

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of)
Lan T. Lewis)
RN License No. 244209)
License Expired 2/13/04)
_____)

Docket No. RN 02-366

FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws ("G.L.") Chapter 30A, § 10(2), 801 CMR 1.01 (6) (d) (2) and (7)(a) (1), the failure of Lan T. Lewis ("Respondent"), after due notice, to appear and defend in this matter, and Prosecuting Counsel's Motion for Entry of Final Default Judgment and for Final Decision and Order by Default ("Default Motion"), the Board of Registration in Nursing ("Board") grants Prosecuting Counsel's Default Motion and issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On April 15, 2005, the Board issued an Order to Show Cause ("OTSC") ordering Respondent to show cause why the Board should not suspend, revoke, or otherwise take action against her license to practice as a Registered Nurse ("RN") in the Commonwealth of Massachusetts ("Commonwealth") based on the allegations in the OTSC. In the OTSC, Respondent was advised that "failure to submit an Answer to the Order to Show Cause within 21 days of receipt of the Order to Show Cause shall result in the entry of default". Respondent failed to file an Answer to the Order to Show Cause.

On July 18, 2005, Prosecuting Counsel filed the above-referenced Default Motion, with supporting Memorandum of Law, Affidavit and Exhibits 1-5. In that Default Motion, Respondent was notified of her right to a hearing and waiver of this right if she did not submit a written response to the Default Motion and a written request for a

hearing within seven (7) days of the date of the Default Motion. Respondent was further notified that failure to respond in a timely manner would cause the Board to: (a) enter a Final Decision and Order which assumes the truth of the allegations in the Order to Show Cause; and (b) revoke, suspend, or take other disciplinary action against her license to practice as an RN in the Commonwealth. At no time has Respondent appeared, responded, or defended.

EXHIBITS

The Board takes administrative notice of the following exhibits that are a part of the administrative record. The OTSC is incorporated herein by reference and attached hereto:

- Exhibit A: Prosecuting Counsel's Motion for Entry of Default Judgment and for Final Decision and Order by Default, Memorandum of Law, and Affidavit of Prosecuting Counsel, with certificate of service and exhibits attached thereto:
1. April 15, 2005, Order to Show Cause, accompanying cover letter, and proof of mailing sent to Respondent by first class and certified mail return receipt requested (No. 7002 3150 0001 3247 8601) at 1015 East Griffith Way, Fresno, California 93704 ("Fresno Address"). The first class mailing was not returned. The United States Postal Service ("USPS") Track and Confirm reports that the certified mail return receipt requested (No. 7002 3150 0001 3247 8601) was unclaimed at the Fresno address and delivered to Boston on July 28, 2005.
 2. Licensee Information printout from the Board dated April 4, 2005, reflecting Respondent's address of record as 376 Elaine Drive, Clarksville, TN 37042 ("Address of Record").
 3. Licensure Verification Search Results from the Department of Public Health in Tennessee dated June 8, 2005, confirming Respondent's license as a Registered Nurse in Tennessee and reflecting Respondent's address as her Fresno Address.
 4. Licensure Verification Search Results from the Department of Health in California dated January 7, 2005, confirming Respondent's license as a Registered Nurse in California with a Fresno, California, address.

5. Address Information Request sent to Postmaster, USPS, Fresno, California 93704, dated April 6, 2005. USPS confirmed that mail is delivered to the Respondent at her Fresno address.

DISCUSSION

By reason of Respondent's default, and upon consideration of Prosecuting Counsel's Default Motion, Memorandum of Law, and Affidavit filed in support therein, the Board **GRANTS** Prosecuting Counsel's Default Motion. Productora e Importadora de Papel S. A. de C.V. v. Fleming, 376 Mass. 826, 833-835 (1978) (default establishes truth of allegations); Danca Corp. v. Raytheon Co., 28 Mass. App. Ct. 942, 943 (1990) (upon default, allegations of complaint are accepted as true); University Hospital v. MCAD, 396 Mass. 533, 539 (1986) (approving administrative agency's imposition of default where it provided reasonable procedural safeguards for notice of consequences of failure to answer and opportunity to object and where judicial review of entire proceeding was available if sought); Wang v. Board of Registration in Medicine, 405 Mass. 15, 19-20 (1989) (where professional lacked current license to practice in the Commonwealth, board had jurisdiction based on professional's inchoate right to renew license). The Board finds that the allegations in the OTSC and the violations of statutes and regulations stated therein are deemed admitted and established. Respondent was afforded an opportunity for a full and fair hearing as required by G.L. c. 30A, §§ 10 and 11 (1), G.L. c. 112, § 62 and 801 CMR 1.01 (4) (c). Wherefore, in accordance with the Board's authority and statutory mandate, the Board orders as follows:¹

ORDER

The Board **REVOKES** Respondent's **RIGHT TO RENEW** her **LICENSE** to practice as a **REGISTERED NURSE** in Massachusetts, RN License No. 244209.

If Respondent renews her Massachusetts Registered Nurse license before the Effective Date of this Final Decision and Order by Default, set forth below, the Board

¹ In that the evidence in this default proceeding, consisting of the above referenced exhibits, was before the Board, no tentative decision is required. 801 CMR 1.01 (11).

REVOKES Respondent's LICENSE to practice as a REGISTERED NURSE in Massachusetts, RN License No. 244209.

Respondent is hereby ordered to return any nursing license issued to her by the Board, whether current or expired, to the Board's office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within five (5) days of the Effective Date set forth below.

Respondent shall not practice as a Registered Nurse in Massachusetts on or after the Effective Date of this Order. "Practice as a Registered Nurse" includes, but is not limited to, seeking and accepting a paid or voluntary position as a Registered Nurse or in any way representing herself as a Registered Nurse in Massachusetts. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by G.L. c. 112, §§ 65 and 80.

Respondent may apply to the Board in writing for relicensure when she can provide documentation satisfactory to the Board demonstrating her ability to practice nursing in a safe and competent manner. Such documentation shall include, but may not be limited to, evidence that Respondent has been in stable and sustained recovery from all substances of abuse for the three (3) years immediately preceding any request for relicensure. Accordingly, Respondent shall with any request for relicensure:

- 1) have submitted directly to the Board, according to the conditions and procedures outlined in **Attachment A**, the results of random supervised urine tests for substances of abuse for Respondent, collected no less than ten (10) times per year during the two (2) years immediately preceding the request for relicensure, all of which are required to be negative;
- 2) have submitted directly to the Board documentation verifying that she has regularly attended group or individual counseling or therapy, or both, during the two (2) years immediately preceding any petition for relicensure. Such documentation shall be completed by each licensed mental health professional seen by Respondent, and shall be written within thirty (30) days preceding any petition for relicensure. Further, such documentation shall include: a summary of Respondent's progress in therapy and her full recovery from substance abuse, dependence and addiction; a statement of the frequency and length of therapy; and specific treatment recommendations for Respondent's sustained recovery from substance abuse, dependence and addiction;
- 3) submit written verification from Respondent's primary care provider and any other specialist(s) whom Respondent may have consulted that indicate that Respondent is medically able to resume the safe and competent practice of nursing, including a list

of all prescribed medications and the clinical basis for such prescriptions, written within thirty (30) days preceding any request for relicensure; and

- 4) if employed during the year immediately preceding Respondent's request for relicensure, have each of her employer(s) during said year submit directly to the Board on official letterhead a performance evaluation that reviews Respondent's attendance, general reliability, and overall job performance.

At the time of any request for relicensure, Respondent must also assist the Board in obtaining documentation satisfactory to the Board that there are no pending actions or obligations, criminal or administrative, against Respondent before any court or administrative body. The Board, in its discretion, may decline to consider any request for relicensure for a minimum of one (1) year after completion of all obligations, including probation, related to any criminal conviction.

Respondent shall provide documentation satisfactory to the Board that each nursing license issued to her by any other jurisdiction is in good standing or is eligible for renewal without conditions.

Respondent shall also submit documentation satisfactory to the Board of her successful completion of all continuing education equivalent to the continuing education required by Board regulations for the two (2) license renewal cycles immediately preceding any request for relicensure.

The Board's approval of Respondent's relicensure may be conditioned upon, and immediately followed by, probation of Respondent's nursing license for a period of time, as well as other restrictions and requirements that the Board may then determine are reasonably necessary in the best interests of the public health, safety, and welfare.

The Board may choose to relicensure Respondent if the Board determines that relicensure is in the best interests of the public at large.

The Board voted to adopt the within Final Decision by Default at its meeting held on August 10, 2005, by the following vote: In favor: Maura Flynn, LPN; Laurie Hartigan, LPN; Sheila Kaiser, RN, NA; Katherine Keough, Public Member; Donna Lampman, RN; Ann Montminy, RN; Salvador Porras, Public Member; Paulette Remijan, RN, NP; and David Seaver, RPh, JD. Opposed: None. Abstained: None. Not Present: Diane Hanley, RN; Janet Sweeney Rico, RN, NP; Jean Roy, RN; and Philip Waithe, RN.

The Board voted to adopt the within Order by Default at its meeting held on August 10, 2005, by the following vote: In favor: Maura Flynn, LPN; Laurie Hartigan, LPN; Sheila Kaiser, RN, NA; Katherine Keough, Public Member; Donna Lampman, RN; Ann Montminy, RN; Salvador Porras, Public Member; Paulette Remijan, RN, NP; and David Seaver, RPh, JD. Opposed: None. Abstained: None. Not Present: Diane Hanley, RN; Janet Sweeney Rico, RN, NP; Jean Roy, RN; and Philip Waithe, RN.

EFFECTIVE DATE OF ORDER

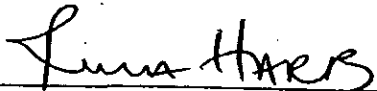
This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of her right to appeal this Final Decision and Order by Default within thirty (30) days of receipt of notice of this Final Decision pursuant to G.L. c. 112, § 64 and G.L. c. 30A, §§ 14 and 15.

Board of Registration in Nursing

Date Issued: AUG 11 2005


Rula Harb, MSN, RN
Executive Director

Notified:

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7005 1160 0001 3500 7440

Lan T. Lewis
376 Elaine Drive
Clarksville, TN 37042

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7005 1160 0001 3500 7457

Lan T. Lewis
1015 East Griffith Way
Fresno, California 93704

BY HAND DELIVERY

Anne McLaughlin, Esq.
Prosecuting Counsel
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street
Boston, MA 02114

ATTACHMENT A

COMMONWEALTH OF MASSACHUSETTS BOARD OF REGISTRATION IN NURSING

Random Urine Testing Information Sheet

- I. Random supervised urine tests are to include, but are not limited to, each of the following substances:

Ethanol
Amphetamines
Barbiturates
Benzodiazepines
Cannabinoids
Cocaine (metabolite)
Opiates:
 Codeine
 Morphine
 Hydromorphone
 Hydrocodone
 Oxycodone
Phencyclidine
Methadone
Propoxyphene
Meperidine

- II. Laboratory criteria and expectations regarding specimen collection are to demonstrate compliance with the following:

- 1) Urinalysis is to be conducted by a laboratory that is licensed by, or meets the licensure requirements of, the Massachusetts Department of Public Health (DPH). The laboratory must have demonstrated expertise in chain of custody and confidentiality procedures.
- 2) Specimen collection shall be random, that is unpredictable in scheduling, which establishes credibility of the specimen.
- 3) Specimen collection shall be supervised, that is observed, witnessed or otherwise assured as valid by a temperature check. This process ensures that urine has not been altered, tampered with, substituted or diluted.

- III. The results of each urine test must be mailed directly from the testing agency to the Massachusetts Board of Registration in Nursing. The Licensee shall be responsible for payment for any and all testing.

- IV. The urine drug testing service must be approved by the Massachusetts Board of Registration in Nursing. National Confederation of Professional Services, Inc. (NCPS) is the **only** approved provider of urine drug testing services for the Massachusetts Board of Registration in Nursing. To contact NCPS, call: 1-800-948-8589.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN NURSING

In the Matter of
LAN T. LEWIS
RN License No. 244209
RN License expired 2/13/04

Docket No. RN-02-366

ORDER TO SHOW CAUSE

Lan T. Lewis ("you" or "Respondent"), you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Nursing ("Board") should not suspend, revoke or otherwise take action against your license to practice nursing as a Registered Nurse ("RN") in the Commonwealth of Massachusetts, License No. 244209, or your right to renew such license, pursuant to Massachusetts General Laws (G.L.) Chapter 112, section 61 and Board regulation 244 CMR 9.03, Standards of Conduct for Nurses, based upon the following facts and allegations:

1. On or about September 20, 2001, the Board issued to you a license to engage in the practice of nursing as a Registered Nurse, License No. 244209. Your license expired on February 13, 2004, and has not been renewed to date.
2. From October 2001 through February 2002, and at all times relevant to this Order to Show Cause, you were employed as a Registered Nurse by Fastaff Travel Nursing Agency at Mercy Medical Center ("Mercy Medical Center") in Springfield, Massachusetts.
3. A review of the medical records of patients assigned to your care at Mercy Medical Center from October 2001 through February 2002 revealed that you repeatedly failed to properly document the handling, administration, and destruction of controlled substances. Specifically:
 - (a) For Patient A, from November 9, 2001 through November 11, 2001, you removed four 4 mg doses of Morphine Sulfate, a controlled substance, from the Omnicell on four separate occasions, but failed to document the administration of the Morphine Sulfate in Patient A's Medication Administration Record ("MAR") or in the Nurse's Notes.
 - (b) For Patient A, from November 9, 2001 through November 10, 2001, you removed three 2 mg doses of Ativan, a controlled substance, from the Omnicell on three separate occasions, but failed to document the administration of the Ativan in Patient A's MAR or in the Nurse's Notes.

- (c) For Patient B, from January 24, 2002 through January 25, 2002, you removed four 4 mg doses of Morphine Sulfate, a controlled substance, from the Omnicell on four separate occasions, but failed to document the administration of the Morphine Sulfate in Patient B's MAR or in the Nurse's Notes.
 - (d) For Patient B, on or about January 25, 2002, you removed one dose of Ativan and one dose of Tylenol with Codeine, both controlled substances, from the Omnicell, but failed to document the administration of the Ativan or Tylenol with Codeine in Patient B's MAR or in the Nurse's Notes.
 - (e) For Patient C, from January 17, 2002 through January 21, 2002, you removed eight various doses of Morphine Sulfate, a controlled substance, from the Omnicell on eight separate occasions, but failed to document the administration of the Morphine Sulfate in Patient C's MAR or in the Nurse's Notes.
 - (f) For Patient C, from January 17, 2002, through January 21, 2002, you removed ten 2 mg doses of Ativan from the Omnicell on ten separate occasions, but failed to document the administration of the Ativan in Patient C's MAR or in the nurse's notes.
- 4. Your conduct as alleged is consistent with the diversion of controlled substances.
 - 5. On numerous occasions during your employment at Mercy Medical Center, you submitted overtime slips for payment for time you were not scheduled to work, and did not work. On many of these time slips, you forged the signature of the Nurse Manager in the Intensive Care Unit to falsely indicate the overtime was authorized.
 - 6. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Registered Nurse pursuant to G.L. c. 112, § 61 for deceit, malpractice, or gross misconduct in the practice of the profession, or for any offense against the laws of the Commonwealth related thereto.
 - 7. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Registered Nurse pursuant to Board regulation 244 CMR 9.03 for violation of Standards of Conduct for Nurses, namely:
 - a) 244 CMR 9.03(5), Adherence to Standards of Nursing Practice. A nurse licensed by the Board shall engage in the practice of nursing in accordance with accepted standards of practice.
 - b) 244 CMR 9.03(31), Falsification of Information. A nurse licensed by the Board shall not knowingly falsify, or attempt to falsify, any documentation or information related to any aspect of licensure as a nurse, the practice of nursing, and the delivery of nursing services.
 - c) 244 CMR 9.03(35), Security of Controlled Substances. A nurse licensed by the Board and engaged in the practice of nursing shall maintain the

security of controlled substances that are under his or her responsibility and control.

- d) 244 CMR 9.03(37), Unlawful Acquisition and Possession of Controlled Substances. A nurse licensed by the Board shall not unlawfully obtain or possess controlled substances.
 - e) 244 CMR 9.03(38), Administration of Drugs. A nurse licensed by the Board shall not administer any prescription drug or non-prescription drug to any person in the course of nursing practice except as directed by an authorized prescriber.
 - f) 244 CMR 9.03(39), Documentation of Controlled Substances. A nurse licensed by the Board shall document the handling, administration, and destruction of controlled substances in accordance with all federal and state laws and regulations and in a manner consistent with accepted standards of nursing practice.
 - g) 244 CMR 9.03(44), Documentation. A nurse licensed by the Board shall make complete, accurate, and legible entries in all records required by federal and state laws and regulations and accepted standards of nursing practice. On all documentation requiring a nurse's signature, the nurse shall sign his or her name as it appears on his or her license.
 - h) 244 CMR 9.03(47), Other Prohibited Conduct. A nurse licensed by the Board shall not engage in any other conduct that fails to conform to accepted standards of nursing practice or in any behavior that is likely to have an adverse effect upon the health, safety, or welfare of the public.
8. Your conduct constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board acts to suspend, revoke, or impose other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or

another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). If you wish to provide for a written transcript, you must arrange for, and bear the cost of, a stenographer's presence at any hearing; and if a written transcript is prepared at your request, then said transcript shall also be provided to the Board, at your expense, for inclusion in the record. G.L. c. 30A, § 11(6), 801 CMR 1.01 10(k); 801 CMR 1.01 10(i).

Your failure to submit a written request for a hearing within 21 days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause within 21 days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. **Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default.**

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice as a Registered Nurse in the Commonwealth of Massachusetts, including any right to renew your license.

Any written request for a hearing and your Answer to the Order to Show Cause, as well as all future pleadings related to the captioned matter, shall be submitted for filing to:

Stephanie Carey, Esq.
Administrative Hearings Counsel
Division of Health Professions Licensure
239 Causeway Street
Boston, Massachusetts 02114

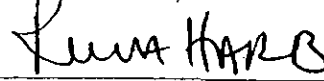
A copy of any written request for a hearing and a copy of your Answer, as well as copies of all future pleadings related to the captioned matter, shall also be provided to Prosecuting Counsel. Prosecuting Counsel for this matter is:

Anne McLaughlin, Esq.
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
Boston, Massachusetts 02108-4619

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact the

Prosecuting Counsel in advance at (617) 624-5419 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION
IN NURSING,

A handwritten signature in dark ink, appearing to read "Rula Harb", is written over a horizontal line.

Rula Harb, RN, MSN
Executive Director

Date: April 5, 2005